

Multi-stakeholder International Governance Initiatives: Addressing the Challenges of ASM Sector in Ghana

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Abstract

Artisanal and small-scale (ASM) sector employs as many as four million people in sub-Saharan Africa. Over 200,000 people in Ghana alone are engaged in mining diamonds and gold at small-scale level. ASM is an important economic sector and income generating activity of rural and urban populations. However, the sector is also associated with adverse impacts on the natural environment, irresponsible mining techniques, social and health problems, dangerous working conditions, gender discrimination, conflicts between illegal ASM operators and large-scale mining companies, child labour and criminal element. Various international organizations have implemented a series of initiatives with an aim to address institutional, technological and environmental problems of the ASM sector in Ghana. Based on the analysis of documents and semi-structured interviews, the paper uses institutional analysis and collective action as conceptual frameworks to examine the success of such cross-border initiatives and their impact on the governance of the ASM sector in Ghana. The Paper also discusses how other initiatives involving local actors are developing in Ghana.

Keywords: Multi-stakeholders, governance, international developmental institutions, small artisanal mining, Ghana

1. Introduction

Artisanal and small-scale mining (ASM) - in this chapter defined as artisanal mining of mineral resources conducted on a small-scale by individuals or groups of miners using rudimentary techniques – is a global industry that supports the livelihood of 13 million people worldwide, through a significant share of ASM operations are conducted informally. In sub-Saharan Africa ASM employs as many as four million people and 200,000 of them work in Ghana, where often unregistered miners operate gold and diamond mines. In Ghana, ASM is a growing sector and important income generating opportunity that attracts workers from around the country and neighbouring states. However, the sector has been also associated with many adverse impacts on the natural environment, irresponsible mining techniques, social and health problems, dangerous working conditions, gender discrimination, child labour and criminal element, and conflicts between illegal ASM operators and large-scale mining companies. With the assistance from international organizations, from 1989 to 2009, the Government of Ghana and the mining industry have implemented various initiatives to address some of these institutional, technological and environmental problems in the ASM sector, with the overarching aim of improving the governance of the ASM sector. However, the outcomes of these initiatives were disappointing both in terms of the specific challenges targeted and in terms of improved governance in the sector. By 2009, all these major programs have been completed or downsized but the ASM sector still remained largely unregulated and highly conflictive, with frequent, sometimes violent, confrontations over the exploitation of mineral resources between mining multinationals and informal small-scale miners or “galamsey”¹.

¹ Galamsey is the local term for informal small-scale mining, it derives from the expression “get all and sell it”.

The chapter aims to understand why improving governance in the ASM has been so challenging and why major multi-stakeholder initiatives promoted in the sector by international organizations (World Bank, United Nations, GTZ) did not succeed. Methodologically, the chapter uses analysis of legislation and policy reports from international organizations to complement field observation and interpretative analysis of 26 in-depth semi-structured interviews conducted with a range of key actors in ASM sector in Ghana from 2005 to 2008. The chapter first describes the context of ASM in Ghana, presenting in more detail its history, the governance challenges faced by the sector and finally outlining the above-mentioned multi-stakeholder governance initiatives. This is followed by the introduction of the theoretical framework: “new institutionalism” (Paavola, 2007; Ostrom, 2005; Polski and Ostrom, 1999), and its relevance to study the problems faced by collaborative initiatives targeting ASM governance challenges. The analysis section evaluated the governance system in Ghana and the reasons for the failure of multi-stakeholder initiatives using the lens of new institutionalism. Finally, the discussions section relates the initiatives’ shortcomings with major structural issues taking place in Ghana: the transitions from community-led to state-led governance and the processes of resistance surrounding the transition.

2. Background

Ghana is one of the largest gold producers in Africa; gold production contributes 5% to country’s gross domestic product and 37% to exports. Since 1990s, the investment in the Ghana’s mining sector has been dominated by foreign companies; and, in 2008, over 200 mining companies were awarded mining leases and exploration rights by the Government (Boon & Ababio, 2009). However, the tradition of artisanal gold mining in Ghana dates hundreds of years back, before the establishment of a legal regime for mining operations in

the country (Hilson, 2002). The legal regime for mining operations in Ghana is divided into two parts: the first was established for large-scale mining operations and the second was drawn for small-scale mining. The large-scale mining regime was established in 1986 by the *Minerals and Mining Law* (PNDCL 153) soon after the Government of Ghana launched the National Recovery Plan in 1983, following the guidance of the International Monetary Fund (IMF) (Hilson, 2002). In the wave of IMF assisted liberalisation of investment regimes, Ghana too has liberalised its investment regime aiming to attract foreign direct investment into exploitation of country's mineral resources. The new legislation has permitted tax reductions, breaks, variable royalties (3-12%), reduced corporate tax (35%), removed restrictions for dividend transfer and reduced import duties to encourage start-ups of large-scale mining enterprises (Hilson, 2002; Akpalu & Parks, 2007).

The regulatory regime for small-scale mining was formed 1989 with the *Small-Scale Mining Law* (PNDCL 218), which began to formalize artisanal mining activities previously part of the informal economy (Appiah, 1998; Hilson & Potter, 2003; Yakovleva, 2007; Hilson, 2010a). The three year delay between the *Mineral and Mining Law* and the *Small-Scale Mining Law* created a regulatory void during which informal small-scale mining, following the global rise in gold prices, has expanded significantly. In the course of the 1990s and 2000s, the ASM sector in Ghana continued its rapid growth and legalized, i.e. formally registering as small-scale miners with licences and permits acquiring plots for mining activities according to the small-scale regulation (Banchirigah, 2008). A substantial share of the ASM sector, however, remained informal (Aubynn, 2009) conducted by "galamsey": unregistered small-scale miners on land plots without official permission. The galamsey groups have been a great concern for the country's regulatory system and its enforcement authorities, as they tend to conduct their mining activities on plots that have been designated to other users, often

large-scale mining companies, which acquired their concessions for exploration and mining activities under the legal regime for the large-scale mining operations.

Apart from the complexities of the legal regime for large-scale and small-scale mining, Ghana has two major co-existing land regimes – state land regime (regulated by land legislation and enforced by state authorities) and customary land regime (regulated by ancient tradition and enforced by local chiefs). Whilst large-scale mining enterprises (often multinationals) and registered small-scale miners are operating under the state land regime to access mineral resources, whereby mineral rights and land rights are allocated the state; “galamsey” are operating under the customary land regime, whereby they access mineral resources with a permission of local chiefs to operate on land plots traditionally belonging to certain chiefdoms. Obviously, the latter group of mineral resource uses are violating the state-imposed land and mineral rights regime; and contributing to conflict around access to resources between the state, large-scale mining enterprises and informal small-scale miners.

Besides the existing conflict between mining parties, the ASM sector in Ghana is associated with adverse impacts on the natural environment and human health due to improper use of mercury and other chemicals in mineral recovery, irresponsible mining techniques (i.e. mines are often left abandoned without proper re-cultivation, officially small-scale miners are not allowed to use blasting, a prohibition often overlooked which leads to greater damage to natural landscapes), social and health problems, dangerous working conditions, gender discrimination, child labour and security issues (Hilson, 2006, 2010; Hilson & Yakovleva, 2007; Yakovleva, 2007). The governance of the minerals sector has been further affected by institutional weaknesses in the area of environmental management and regulation, as the

Environmental Protection Agency Act was passed by Ghanaian Parliament only in 1994; 8 years after the enactment of the *Mineral and Mining Law* (Akpalu & Parks, 2007).

On the other hand, several major initiatives supported by international organizations were designed and implemented during the course of 1989-2009 with the overarching aim to improve the governance of the ASM sector in Ghana, specifically targeting regularization, pollution, institutional development and policy support in the small-scale gold mining sector. The initiatives analyzed in this chapter include: 1) Small-Scale Mining Project; 2) Mining Sector Development and Environment Project; 3) Prestea Action Plan; 4) Alternative Livelihood Project; and 5) Abatement of Mercury Pollution Programme².

As Table 1 shows, the assessment of the outcomes of these programs ranged from moderately satisfactory to less than satisfactory, partial and total failure (World Bank, 2003). Academic literature was less generous with all the programs (see Hilson & Yakovleva, 2007; Styles et al, 2010; Telmer & Veiga, 2008). Hilson (2010b) highlighted many governance failures remaining after the programs came to an end. It proved extremely difficult to bring the sector under regulation, register all small-scale miners, distribute land plots, effectively oversee environmental and health impacts, prevent human rights violations against local communities and provide alternative lifestyles to farmers expelled from sites. Besides, a government official interviewed for this research suggested there are much more informal mining than those formally registered, which constituted a significant challenge for the governance,

² Besides, other multi-stakeholders initiatives have had an impact on small-scale operations in Ghana, such as: Diamond Sector Reform Programme supported by the United States Agency for International Development (USAID); Compendium of Best Practice in the Small-Scale Mining developed by the UN Economic Commission for Africa; Extractive Industries Transparency Initiative (EITI); Global Dialogue; Kimberley Process Certification Scheme; and Diamond Development Initiative International. These initiatives are excluded from the analysis as they address broader geographical areas, minerals commodities, issues and topics

workers, legal operators and local communities and escalated into incidents of expulsion of galamsey with force leading to violence.

Insert Table 1 here

3. Framework

The new institutional approach to environmental governance³ (Paavola, 2007; Gibson et al, 2005) suggests that governance is best understood as the establishment, affirmation, or change of institutions to resolve conflicts over the use of resources. To date, new institutional research has focused on governance of common-pool resources – i.e., forests, pastures, fisheries – with which the governance of mineral resources in Ghana shares two defining attributes: rivalry over consumption and difficulty of exclusion. Institutions resolve conflict by striking a balance between conflicting interests. A governance solution is the particular configuration of exclusions, entitlements and institutional rules underlying the decided balance of conflicting interests (Ostrom, 2005)⁴.

³ This approach calls to extend analysis from common pool resources to other kinds of resources. It also extends the use of institutional analysis from local (i.e., local common property arrangements) and international domains of application (i.e., environmental conventions) to all governance solutions, including national environmental and natural resource use policies and multi-level governance solutions (Paavola, 2007).

⁴ Institutional Analysis focuses on individuals (individual actors) or organisations (collective actors) which make decisions over a course of action (Ostrom, 2005). Actors interact with each other in ‘action situations’ leading to certain outcomes which are bounded by context exogenous variable such as biophysical and material conditions, attributes of the community, institutions and rules-in-use. Attributes of the community are “the values of behavior generally accepted in a community; the level of common understanding that potential participants share (or do not share) about the particular types of action arenas; the extent of homogeneity in the preferences of those living in a community; the size and composition of the relevant community; and the extent of inequality of basic assets among those affected” (Ostrom, 2005: 26-27). In turn, rules are conceptualised as “the set of instructions for creating an action situation in a particular environment” (Ostrom, 2005: 17)

Rules can be formal (laws, regulations etc) and informal (how things are done, cultural and religious codes of conduct), Paavola (2007) identifies four types of rules shaping the interaction between the actors:

- *Rules of exclusion* define how unauthorised uses of a resource can be excluded.
- *Rules of entitlement* assign actors the rights to use a resource and create hierarchies of rights and accepted uses, these can have implications for government outcomes and distribution of benefits of resource use.
- *Monitoring rules* determine what is monitored and by whom.
- *Decision-making rules* configure which actors entitled to make decisions, the procedures they should follow and whose interests should be balanced/prioritised when making a decision.

Rules define what actions are “required, prohibited, or permitted and the sanctions authorized if the rules are not followed” (Ostrom, 2005, p. 38). A well-designed system of rules provides the support for seven ‘governance functions’ that should be fulfilled to warrant successful outcomes: 1) Exclusion of unauthorized actors, 2) Regulation of uses and distribution of benefits, 3) Provisioning and recovery of costs, 4) Monitoring, 5) Enforcement, 6) Conflict resolution, and 7) Collective choice. The Table 2 expands on these functions with examples of their application in the ASM sector. Three main types of governance solutions, i.e. state-based, community-based and co-management respond to particular configuration of aforementioned governance functions and rules (Paavola, 2007).

Insert Table 2 here

Finally, there are three successive and interrelated governance levels or functional tiers of governance where the fulfilment of functions should be consistently aligned by governance solutions: operational, collective choice and constitutional choice (Ostrom, 2005; Paavola, 2007). The functional tiers are governed by corresponding rules (Di Gregorio et al, 2008; Nicholson, 1993). Outcomes of the constitutional level are the results of decisions about how collective choice actors are selected and which patterns of interaction will define relationship among participants of the collective choice body (e.g. voting rules and representation). At the collective choice level, authorized actors make choices interpreting the outcomes of the constitutional level (i.e., who is entitled to use a resource and how) and the rules they follow in making such decisions are institutional rules. The operational level of governance includes the rules of decision-making on day-to-day activities that affect the physical world directly within the constraints of operations rules which define choices set. Paavola (2007) suggests that the choice of governance solutions is a matter of social justice rather than economic efficiency, emphasizing the importance of governance solutions that can accommodate private ownership and collective ownership.

4. Methodology

The research used both secondary and primary data. Secondary data from international organizations and policy reports and regulation was used to make a preliminary assessment of multi-stakeholder programs. To investigate the sector in depth and the reasons for failure/success of the programs, 26 semi-structured interviews were conducted with key actors in the ASM sector in Ghana in 2005 and 2008 (see Table 3). The interviews lasted between one and two hours. Interview topics included sustainable livelihoods, challenges of the ASM sector, conflict between small- and large-scale mining actors and success of multi-stakeholder governance initiatives. Interviews were recorded with a permission of respondents and later

transcribed. The transcripts were coded focusing on three core aspects of Pavola's (2007) framework: 1) functional and structural tiers of governance institutions; 2) governance functions and their organisation; 3) formulation of key institutional rules.

Insert Table 3 here

5. Analysis

5.1. Governance of ASM

According to Paavola (2007), governance solutions require promotion of procedural justice which is concerned with the following questions:

- 1) Which parties and whose interests are recognised and how?
- 2) Which parties can participate and how?
- 3) What is the effective distribution of power?

Our analysis reveals that major parties or actors involved in the governance of the ASM sector are: registered small-scale miners; informal small-scale miners (workers and groups who are not legally registered as small-scale miners and/or who conduct operations on plots which are not legally allocated to them to lead mining activities); members of the small-scale mining value chain (financiers, buyers and equipment suppliers); customary land owners (chiefs and individuals); other land users (farmers, etc); large-scale mining companies; local communities around both the mines; members of a network formed around the small-scale mining (suppliers and vendors, etc); national government and its departments at national,

regional and local level; local municipal authorities; nongovernmental and civil society organizations (NGOs); large-scale mining companies and their associations; and international organizations.

We find that the current governance of the ASM sector has set the rules of exclusion that define who are formal and informal small-scale miners. Entitlement rules have also been put in place, these are procedures for registration of small-scale mining operations, licensing and permitting. Although a system has been put in place to monitor the operations of small-scale mining sector, it only extends to registered miners and cannot effectively monitor informal mining operators. Finally, informal small-scale miners are excluded from influencing the decision concerning use of minerals, land and other natural resources. The distribution of power attempted by governance functions aimed to transfer power from the customary land use regime to the state-based regime. To this end, governance rules disempowered communities, customary authorities, small-scale miners and gamsey, while empowering the central government, large companies, and supranational institutions such as the World Bank and a select number of international NGOs.

The analysis of levels of governance reveals weaknesses in procedural justice and a substantial lack of alignment between actors and governance rules in each level. As a result, the distribution of power is ineffective as evidenced by the steady spread of gamsey activity and large companies' importance to protect their concessions from gamsey occupation. Indeed, incidences of expulsion of gamsey with force leading to violence are just the surface of an increasingly antagonistic pattern of relationship between major actors in the mining sector (government, registered small-scale miners, large-scale miners, unregistered small-scale miners, customary authorities) that leads to social injustice (exclusion of small-scale

miners from legal access to mineral resources and over-exposure to environmental and health risks and violence). This antagonism is the expression of a social divide brewing social injustice in the form of the exclusion of small-scale miners from access to mineral resources, the expulsion of farmers by new concession holders and the denial of traditional knowledge and norms and the exposure of communities to violence and environmental risks.

Constitutional level rules – legislation- attempted to reduce the agency of customary authorities as described by the interviewee: *“Chiefs, their problem is that they do not have control of the concession, you see once the concession has given to the mine, the chief does not have any authority whatsoever”* (Manager of mining company 3, 2005).

In addition, constitutional rules they deny traditional knowledge and exclude small-scale miners’ interest from the design of formal rules for land allocation. This creates both incentives for illegal mining and a regulation enforcement void that makes “formal actors” unable to prevent and control illegal activities.

“Now, if somebody goes into your concession and you report it to the chief, he has no authority to stop them coming. Indeed, the chiefs are often behind the illegal miners. Some chiefs took into their hand the authority to license small grounds to some groups” (Manager of mining company 1, 2008).

“In the Awaso area, the police had been bought by the illegal miners, so in the end they had to bring in the military but this something us we would never do because the Ngo’s already want some excuse to tarnish the image of registered mining companies” (Manager of mining company 2, 2008).

At the institutional level, formal processes reinforce injustices and create incentives for illegal mining through cumbersome bureaucratic procedures, high registration fees and limited availability of suitable areas for small-scale mining.

“If you ask galamsey to pay 60000 cedis before they begin their activities they cannot do it” (Government official 4, 2005).

“The areas given for small-scale mining have not been explored, we do not know if there is any gold there; and there is no funding to hire universities. Small-scale miners are not allowed doing prospection and there is thus perception that all good goldfields are in concessions. So, why people would pay a license to work where there is no gold? They will go and find it in a concession, but if you are mining in somebody’s land we cannot give you a license” (Officer from Minerals Commission, 2008).

An additional incentive for informal mining was the lack of mechanisms to channel financial support for ASM miners. Neither public nor other institutional funds are available in the country to support ASM activities “...financial support for small-scale miners.. is on case to case basis... they want to work systematically over a long period then they can actually make their case and present a request” (Government officer 5, Ghana, 2005).

However, governance is achieved through informal institutions leading to incipient co-management solutions. Despite regulatory attempts to marginalize customary authorities, both galamsey and companies acknowledged some degree of agency of local chiefs to deliver governance functions as indicated in the interviews:

“Some chiefs took into their hand the authority to license small grounds to some groups. You have to make an agreement to give him some formal authority to act in your behalf. It depends on how influential the chief is. If the chief is influential he will use his authority to discourage or to persuade people from going into their lands” (Manager of mining company 2, 2008).

Local communities also provide private investors to fund small-scale-mining, although at very high rates. At the operational level, formal rules and state representatives reject all interaction with galamsey- even for humanitarian purposes: *“The galamsey mandate is one of an illegal operator, operating on somebody’s concession. So if you go there and advise the person then it means that you are glorifying illegality and that is dangerous”* (Government official 3, Ghana, 2005). However, some companies successfully managed cooperative interactions with galamseys. The analysis reveal the development of bottom-up approaches to governance from the operational level, where a conjunction of day-to-day realities *“The reality is that you live with that problem, you need to interact with them and relate to them in the best possible way”* (Manager mining company 1, 2005) and external constraints (image, international pressures) forces companies to interact and negotiate use of lands with informal miners and local chiefs.

“You need to know how to talk and engage the galamsey. They must trust you, you must be seen doing something for the community. We actually helped them in the day-to-day of doing galamsey, we help them increase recovery and move away from the use of mercury, we develop alternative programmes with them, even let them know that we can get some of them working on the main mine “Because we have good relationships with them, everytime they have tried to go into a particular concession we have been able to persuade them. We have also the fear of becoming a suction

point for other miners, but it was the opposite, our miners fed-off new entrants to protect their relationship with us” (Manager mining company 1, 2005).

However, changes need to reach the constitutional level to provide stable governance. In a well-functioning governance system, actors can move among the different levels, looking for the best outcomes within a given set of rules or bargaining to shape collective or constitutional choice rules to their benefit. The review of the governance system of the ASM sector in Ghana reveals that the party that both affects the sector and is affected by the governance – informal small-scale mining operators – are largely excluded from decision-making and power distribution.

6. Multi-stakeholders initiatives

The interviews revealed a consistent perception of failure of these initiatives at the operational level. Our analysis suggests that failures at the operational level were indeed a result of combination of weaknesses of governance solutions at the constitutional, institutional and operational levels. In all the programs, legislation at the constitutional level was taken as a given. Therefore, the exclusion of galamsey from land use resulting regulation, cascaded down to institutional and operational level solutions that explicitly denied galamsey the rights to access information or participate in consultation. In many cases, there was also a misalignment between institutional and operational solutions, associated in many cases with intention of supra-national institutions and some companies to enforce a variety of rules of exclusion of local actors, from attempts to impose one-size-fits-all policies, to red-tape and explicit denial to acknowledge agency or entity customary authorities. We will briefly analyse each initiative, highlighting insights into specific areas of governance solutions that need to be addressed.

6.1. Constitutional and Institutional Levels Weaknesses

The Small-Scale Mining Project (SSMP) reveal asymmetries at the constitutional level in the design of programs in terms of the effective distribution of power between the funding institutions (World Bank and GTZ) and the Ghanaian government. The government had limited say in terms of decision-making rules, from the design of the initiative, to selection of areas of intervention and appointment of experts. As a consequence, Government representatives criticized the project as being broad focus without due consideration of the local context. As a solution, Government representatives expressed a desire to narrow the focus of initiatives for specific geographical areas, which would take into account local conditions of mining and operations of the ASM sector in Ghana, as suggested by one of the Government officials: “*it’s not emeralds in Zambia – it’s gold mining in Ghana*” (Government official 2, 2008).

Mining Sector Development and Environment Project targeted the constitutional and institutional functional levels but its reach at the operational level was limited. Although the initiative was discontinued by 2009, it played an important role as a founding initiative that assisted the development of the governing system of the ASM sector in Ghana. However, the criticism from interviewees highlighted the failure to address the critical governance function: provisioning and recovery of cost, both at the constitutional, institutional and operational levels. At the operational level, in terms of provision of funding for small-scale mining, the miners were keen to register. At the institutional and constitutional levels, in terms of resourcing the institutions, dealing with small-scale mining within the Government of Ghana, as one of the interviewees asserted:

“To be honest with you, I think that the EU and World Bank projects in relation to the small-scale miners have been more of a lip service because if you go down the small-scale mining department of the Minerals Commission it is the weakest link of the Minerals Commission...They do not have the resources. It is the weakest link because, you see, they are reluctant to deliver and also assert authority in the case of finances and they are the least resourced.” (Academic, University of Ghana, 2008).

6.1.1. Institutional and Operational Level Weaknesses

Prestea Action Plan is a powerful example of how ill-designed exclusion and decision-making rules can hinder governance functions, in this particular case conflict resolution, distribution of benefits and exclusion of unauthorized users. The plan aimed to impose a strictly state-based governance solution for the conflict arising out of the occupation of Prestea mine by hundreds of galamsey. However, the government lacked information to provide the fair system of regulation of uses and distribution of benefits (providing alternative suitable areas for small-scale exploration). The government did not have resources, nor the will to continuously monitor the uses and enforce the exclusion rules. Critically, the government did not have the technical information and resources to fund the survey to identify areas feasible for small-scale mining.

Small-scale miners were not entitled to carry on their own explorations while galamsey communities were not consulted concerning the attractiveness of proposed areas for mining. As a consequence, although the workers were initially removed from the concession of the large-scale company (with intervention of armed units), the small-scale miners did not take up areas that were identified by the Government for them. Instead, they scattered to other areas continuing the informal operations, spreading conflict with other mining multinationals and

ultimately returning to the concession. The government officials and others now voice an idea that correspond to Pavvola's co-management governance solution. Large-scale mining can go alongside small-scale mining through voluntary agreements at the operational level. These agreements can be negotiated by companies with galamsey operating on concessions as commented by the following interviewee:

“If you allow the small-scale miners to come to that place they will go beyond their bounds and then affect the large concession that you have, because of that you are denying them. But I believe that if they sit the small-scale miners down in and said that yes we have actually cordoned off this area for your operations. We have provided you with the technical systems so that you can actually operate very efficiently. Stay there and leave the bigger concession for us to work on I believe that system will work because it has been tried and tested at Awaso and it has worked so I know can also work elsewhere.” (Government official 6, 2008).

Alternative Livelihood Project. In 2005, most of the state and private sector interviewees praised potential of *Alternative Livelihood Projects* to improve governance and solve conflict by creating new sources of income in the ASM sector. However, by 2008, the enthusiasm had petered out and livelihood projects were hardly mentioned by the government representatives and companies. Despite good intentions, this outcome was almost inevitable. From the onset, the effectiveness of livelihood initiatives launched in the mining communities had been heavily criticized by local NGOs and local communities. One of the aims of providing skills for local communities in mining areas was to deter from joining the informal mining activities by providing them with skills to pursue productive employment and earning opportunities in other sectors. However, the interviews revealed a widespread failure both at the institutional level (lack of assessment of community attributes and needs, neglect of dominant informal

rules, habits and capabilities) and operational level (implementation, engagement and scale up). The governance solutions underlying livelihood projects were particularly wanting in terms of justice in the distribution of benefits and enabling collective choice to decide how to compensate those excluded from the use of land. Farmers displaced from their traditional lands by large-scale mining operations or aspiring artisanal miners were denied access to concession areas and did not generally benefit from the skills programs, as reported by a local NGO:

“You see our people... are farmers and then you take away agriculture from them and then you tell them that I want you to be a fish farmer...picking snails...collecting leaves for wrapping food... this is work for women... tell them that shift from agriculture now go into grass cutter rearing, or go into snail farming... which lives wild in Ghana. Should the farmer go into soap making and compete in the open market with Lever Brothers, with multinational companies... We can get involved in any form of sustainable livelihood but the grass cutters will need grass and it's not available to them.” (NGO officer, 2005).

Abatement of Mercury Pollution Program was developed by United Nations Industrial Development Organization (UNIDO) in cooperation with the Ghanaian and Tanzanian Governments which participated in its design and operationalization. It aimed to eradicate pollution and poisoning following the use of mercury by ASM miners. The program failure can be traced to two main reasons. As in all other programs end users were excluded from the design of solutions and decision-making (formal and informal ASM miners). In addition, the program was oriented only at the operational level of governance but failed to address how operational level aspects connected with institutional level through supply chain of mercury in the artisanal gold mining. As reported by a local NGO in 2005:

“Community people do not import chemicals, they do not import mercury. So if there’s still mercury in the system the Government [should] make sure that when it finds the use of mercury, mining companies dispose of them properly. And what are they doing with them if they do not dispose of them? So, I think it’s something that someone should investigate. The link between the use of mercury by galamsey people and the mining companies.” (NGO officer, 2005).

6.2. Discussion: The Reasons for Failure of Multi-Stakeholder Initiatives and ASM

Governance

The implementation of governance initiatives examined in this chapter followed a logical pattern. The early initiatives were mostly focusing on establishing the constitutional arrangements, moving onto the institutional arrangements and the most recent ones introducing the initiatives that targeted the operational level of governance. Although the growth of the informal gold mining sector persisted throughout the 2000s, and most of the initiatives to some extent failed to deliver the expected outcomes, we cannot dismiss these initiatives as the total failure as they were introduced and implemented in the circumstances of almost total absence of formal governance rules. It is a gradual process. By building the system from top to bottom, each initiative was building on the previous one, accumulating more experience, building on evidence and resources constructed during the preceding initiatives. It is evident that these initiatives were linked to one another and as a positive feature, these initiatives did not ignore previous interventions and experiences. In isolation, none of them were delivered to the full success but together they can be seen as gradual steps in building a formal system for the ASM governance. The close examination of the governance initiatives reveals several design and implementation flaws, and if addressed can lead to efficient delivery of future programs.

The analysis of governance conditions and multi-stakeholder programs aimed at solving the problems of the ASM sector demonstrates the underlying structural problem: constitutional rules exclude customary authorities and create a vicious circle of exclusion of galamsey. The initiatives that were designed to address the challenges of the ASM sector (spanning to both to formal and informal sides of it) have mainly failed to incorporate the informal users in its development and implementation.

As a consequence, the voice of small-scale miners and their day-to-day problems and realities have been excluded from the design of multi-stakeholder programs providing basic training on environmental and health and safety issues or aiming to develop alternative livelihoods to mining. Unsurprisingly, these programs failed. Indeed, it was not only galamsey who were excluded from the important governance functions in these programs. The programs did not consider the roles and influences of key players in the political economy of informal mining such as chiefs, vendors, suppliers and financiers of small-scale-mining who were also ignored. Constitutional decisions followed the donor's agenda and donor's priorities (e.g. decisions such as who is considered an expert, where the programmes were focused, what problems were targeted and what solutions implemented). Local stakeholders were only involved in the collective action and operational level, within the rules of interaction and procedures defined by the donor. As a result, local stakeholders seem to think that these programmes often had a hidden agenda to benefit donors (e.g. paying foreign experts and buying foreign technology) and are not satisfied with the outcomes of collaboration to solve local problems.

As a case in point the extracts from an interview with Minerals Commission officer that collaborated with GTZ exemplifies problems highlighted in most programmes. Problems affecting collaboration included perceived lack of transparency: *“I don’t think we derived much from GTZ. I mean the funding the German government provided. They never made us aware of how much money was going to the project and they would bring their so-called expert and said, oh this man is here for 24 months. How much are you paying that person? Nobody knows”* (Officer from Minerals Commission of Ghana, 2008).

The second most important drawback of the program design was a failure to draw on local expertise and distrust of legitimacy of offered expertise as indicated by interviewee:

“They brought some German pumps, whether those pumps can really do the work satisfactorily for the miners on the ground is for me and you to judge. Most of them I would say never performed. In fact, just a waste of resources” (Officer from Minerals Commission of Ghana, 2008).

“They don’t do small-scale mining in Germany. They don’t mine gold there. They mine coal and they bring a coal expert and tell you that person is an expert in gold small-scale mining. That’s unheard of!” (Officer from Minerals Commission of Ghana, 2008).

From the institutional perspective, the current challenges of the ASM cannot be resolved by multi-stakeholder agreements, where the agenda is decided by the northern donor and is underpinned by state-centric governance rules. The challenges of the ASM are attributed to a transition from ASM problems from community-based management of resources, such as

customary regulation of land and mineral resource use, to state-based governance system which are defined by Mining Code and small-scale mining regulation.

In order to be effective in solving the ASM challenges, multi-stakeholder agreements should be designed to cultivate collaborative relationships between stakeholders representing both regimes (Sarkis et al, 2010). Instead they have been used as tools to accelerate the transition and empower state-based institutions. According to the customary governance of natural resources, following a principle of unified rights for surface and mineral, the owner of land surface has mineral rights. Therefore, chiefs that have customary rights for land surface allow artisanal miners to lead their operations on their lands, considering that mineral rights go together with land rights.

Customary resource use regime usually allows multiple uses of land, e.g. farming, fishing and mining (Di Gregorio et al, 2008). The interviews indicated that traditionally, the small-scale mining has been conducted at the same time or complimentary to farming activities and communities managed both mining and agricultural activities in the same area until the new regime of state-based governance challenged the multiple use of land. The state-based governance of the extractive sector excludes other uses in mineral rich areas and only allows mining activities on certain plots of land. This can be seen in relation to both registered concessions for small- and large-scale mining.

By removing farmers from mining plots while deterring rural population from joining the informal small-scale mining sector, the regulators fail to provide alternative avenues of employment or unemployment protection. The sustainable livelihood programs aimed to protect the welfare of displaced farmers, but their success was one again faulted by the design

of alternatives without the adequate mechanism for engagement with local communities and customary authorities. Another facet of this discussions that should be integrated in multi-stakeholder agreements is how to engage the surplus of skilled labor from the small-scale mining industry (Hall and Soskice, 2001). Hilson and Yakovleva (2007) observed that the government policies were not effectively addressing the issues of protection and employment of industry-skilled labor and thus many of them remained as miners informally. Alternative livelihood strategies in rural Ghana were initially perceived as an avenue to accommodate such labor surplus. However, most of them were unviable whereas the few cases that worked had limited scale-up potential (Banchirigah, 2008; Okoh and Hilson, 2011; Hilson and Banchirigah, 2009).

It is evident the state strategies aimed at containing the informal mining sector and deterring the informal miners from accessing mineral resources. Agents that bought gold from small-scale miners for the State Precious Metals and Minerals Commission did not discriminate against non-registered small-scale miners and continued to buy gold from unregistered miners. If the system was even further prohibitive of informal mining, it would lead to displacement of many thousands of workers from employment opportunities and income streams thus leading to negative social and economic effects in the mining areas of Ghana. Moreover, although there was a concern for negative environmental effects of small-scale mining with respect to the use of mercury, the control of mercury trade in the countries was not explored.

The benefits for rural communities to engage with informal miners are shown in studies highlighting the increased rural incomes or second-income streams in the country (Okoh and Hilson, 2011). As the number of informal miners grew, as well as the understanding of the

sector, we saw that the attitudes towards the informal mining has changed. Galamsey are no longer seen as criminals, but the sector is still problematic and should be brought within the legal framework and monitored. Comparing the first interviews conducted in 2005 with those conducted at the end of 2008, there are some changes in the perception of various actors about the informal ASM.

“If you use the terminology of galamsey in this country, then it means people who are actually working on small-scale mining basis illegally.” (Government official 1, 2005)

“Galamsey, they are informal miners because they are contributing to the informal economy, they buy good and equipment from local communities. You need to understand [that] in their culture, the land belongs to the community, even the chiefs do not own land” (Government official 4, 2008).

There were instances when key actors in the sector considered collaboration between informal (and formal) small-scale miners and large-scale mining operators. In some later interviews there were institutional-level proposals to manage a double system for mineral concessions whereby small-scale miners could work on the surface for short periods of time, followed by mechanized large-scale mining operations that can take place in the same areas/

“We have different galamsey operators. We have some who operate on the hard rock and others who mine on deep seated alluvial. But there is another type, who work only on the surface, the overburden, they call it ‘dig and wash’. This type of people are not interested in licence. The reason why they are not interested in licence, they go there for a very short time.” (Government official 2, 2005)

If the ASM miners work for a short time on the surface, companies can allow them to work for certain periods of time, stipulating the conditions of operations (use of chemicals and machinery). Although the implementation of such proposals might be a long way ahead, the discussion of solutions different from total denial and exclusion could be the way forward for improved governance of the sector. Pluralist approach that is inclusive of informal miners, who are engaging in mining to escape poverty and supply rural communities with much needed developmental resources.

7. Conclusions

Table 4 summarizes the main factors influencing the success and failure of current governance solutions in the ASM sector in Ghana. In the circumstances when major actors in the ASM sector are confrontational, there are difficulties in building spaces for deliberation. The current governance framework in Ghana lack procedural justice mechanisms and therefore does not allow for promotion of open discussion and debate, inclusive of various parties in formal and informal sector who are operating in the same areas (Hall and Soskice, 2001). As a consequence, multi-stakeholder agreements underpinned by the northern state-and-market-centric perspective are largely ineffective to address the sector's challenges and only respond to their donor's agenda. In an attempt to address the challenges of the informal mining sector, one solution could be found in building a discussion by deliberating and listening to different actors, such as customary owners and users, informal supply chain operators, traditional chiefs and informal small-scale operators themselves.

Insert Table 4 here

By opening the spaces for deliberation, future programs should focus on working to create co-management solutions to focus on the following governance problems:

- Exclusion of small-scale miners from access to mineral resources.
- Entitlement and availability of land for ASM.
- Distribution of benefits, prospection rights for ASM on par with large-scale mining sector.
- Provision of financial and technical support to ASM.
- System for monitoring unauthorised users.
- Enforcement, such as implementation of viable alternatives to avoid violence and use of force.

In addition to promoting public discussion, policy-makers could be considering alternative land regimes in the mining areas. Can there be avenues for forming and constructing a system of alternate uses on the same mineral concessions, whereby small-scale miners and large-scale miners can operate on same concession? Issues to consider are plenty: depth, periods and length of exploitation. How to control and regulate this system of alternate use? Can it be possible to combine agricultural activities or any other use of land? For instance, alternating small-scale mining with farming? Can they exist side by side? How to regulate this system?

There are grassroots informal arrangements between large-scale mining companies and small-scale miners, where they co-exist either as neighbours or latter tolerated as intruders as long as they do not cause significant obstruction to the mining companies. This indicates that there is a space for such co-existence. If this practice exists, can it be formalised and negotiated?

Can we see a future where small- and large-scale mining operators co-exist in the same area on the basis of negotiated agreements as an alternative to legislative reform?

Our analysis highlights the problems faced by the initiatives that have attempted to regulate and address negative impacts within the informal mining sector. The design of these initiatives with the focus on formal regulation and technical assessment, exclusion of end-users, informal rules and customary authorities from decision-making processes and the lack of suitable arenas for interaction, collective consultation and deliberation, have hindered their reach and significance. Future initiatives could be improved by reconsidering these top-down approaches to governance solutions. The framework of the analysis can be also applied to improvement of governance solutions for informal economies in the sectors other than mining.

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TABLES

Table 1. Multi-stakeholder initiatives in the ASM sector of Ghana

Initiative	What and why?	The target	Instruments	Donor assessment
<p>Mining Sector Development and Environment Project</p> <p>Partners: World Bank (Donor), Minerals Commission Ghana</p> <p>Implementation 1995-2009</p>	<p>Capacity building of the mining sector institutions and support of the small-scale mining (SSM). The reason was the relative neglect of socio-economic and environmental issues in the World Bank's earlier interventions in the mining sector</p>	<p>Mining sector institutions, the mines (the construction of a dam), the miners (health)</p>	<p>Introduction of the new equipment, new retorts, capacity building instruments, new developments (dam, reclamation of land).</p>	<p>Moderately satisfactory</p>
<p>Small-Scale Mining Project</p> <p>Partners: GTZ (Donor), Ghanaian Government, Precious Metals and Minerals Commission, the Geological Survey Department</p> <p>Implementation 1989-2005</p>	<p>The provision of support to the SSM just after its legalization, because the mining sector required support after the legalization.</p>	<p>The mining sector (emphasis on SSM)</p>	<p>Improvement of technological aspect of existing mines; provision of new equipment; search for new areas to conduct for SSM</p>	<p>Many objectives not met</p>
<p>Prestea Action Plan</p> <p>Partners: Ghanaian Government, Mineral Development Fund, Communities and Artisanal</p>	<p>Relocation of galamsey to suitable areas; improved organization of SSM in order to legalize their activities and foster</p>	<p>The industry, but mainly the galamsey</p>	<p>Newspaper announcement; setting new demarcated areas for settlement which lacked sufficient services</p>	<p>Failed</p>

Small-Scale Mining (CASM, World Bank – Donor), Golden Star Resources	greater engagement with galamsey			
Implementation 2005-2008				
<p>Alternative Livelihood Projects (2005, ongoing) also including Local Economic Development Projects, umbrella title “Re-Skilling Program”</p> <p>Partners: Ghanaian government and universities, OICI (an international NGO), Multinational companies (e.g. AngloGold Ashanti, Newmont)</p> <p>Example: Collaboration between AngloGold Ashanti and university centre</p> <p>Implementation 2005-ongoing</p>	To provide alternative livelihoods to galamsey in order to dissuade them from illegal mining and attract them to other activities such as farming. Belief that other activities can be more profitable and beneficial for the communities around mines.	Galamsey and local communities around mines	Training in other activities and business-awareness training	Disputed, less than satisfactory in several cases
<p>UNIDO Abatement of Mercury Pollution Program</p> <p>Partners UNIDO, Ghanaian government and Tanzanian government</p>	Assessing the impact of mercury on environment and human health, raising awareness, fostering better technologies	Galamsey and the industry	Formal and informal training, various materials disseminated, technical and non-technical issues covered	The organization of the project appeared to be much better

Table 2. Current governance functions of the ASM sector

Governance functions	Application in the ASM sector in Ghana
Exclusion of unauthorised actors	Registration of small scale miners
Regulation of authorized uses and distribution of their benefits	Allocation of suitable land for small scale miners to operate. Prospection costs. Identification of health and safety and environmental risks, alternative technologies, land compensation, resettlement
Provisioning and recovery of costs	Financial and technical support
Monitoring	Mineral Commission Inspectors. Limited institutional capacity
Enforcement	Expulsion of of unregistered small scale miners from concessions
Conflict resolution	Alternative uses, mining excludes other land uses, large-scale mining excludes small-scale.
Collective choice	Spaces for dialogue between galamsey, government, industry and customary authorities. Inclusive decision-making (not enabled).

Table 3. Interviews by type of actor

Range of actors	Interviews
Government departments	11
Small-scale miners and buyers	4
NGOs*	5
Large-scale mining companies and industry associations	6
Total	26

* includes NGO and university

Table 4. Factors for success/failure of governance solutions in the ASM sector in Ghana

Stage	Level	Factors
Design of solutions	Constitutional	<p><i>State-based vs. co-management governance system</i></p> <p>State-based governance is not an appropriate solution for Ghana. Co-management, multilevel governance is required when local knowledge and cooperation is a condition for success.</p>
	Institutional	<p><i>Skills for deliberation</i></p> <p>No initiatives to promote institutions/skills that enable deliberation.</p> <p><i>Exclusion vs. inclusion</i></p> <p>Assumes that ‘unregistered’ can be excluded from governance solutions and these would still be viable.</p>
	Operational	<p><i>Assessment of needs and capabilities</i></p> <p>Lack of assessment what works on the ground.</p>
Implementation of solutions		<p><i>Consultation in decision-making:</i> Top-down approach fails to interpret acceptance factors at operational levels (limited consultation with end users).</p> <p><i>Evidence and expertise in decision-making:</i> Suspicion of ‘quality of expertise’ by parties involved in implementation.</p> <p><i>Transparency of decision-making:</i> Necessity to avoid limited transparency of decision-making.</p> <p><i>Progression of solutions:</i> Focus on general advice is contested by participants and greater desire to seek specific solutions.</p>